

Federal Legacy of Quebec's Quiet Revolution

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Abstract

For about forty years Quebec and the rest of Canada have tried to find ways of modernizing the Canadian constitution which would be acceptable to both sides. Some progress has been made but the problem remains unsettled. Recent developments, however, seem to point in the right direction.

Introduction

Prime Minister Stephen Harper's Conservative government, in early 2007, faced with a politically mischievous draft Resolution by the Quebec *Bloc Québécois* in the federal House of Commons, seeking a vote to declare Quebec as a "Nation," grasped the political nettle with his own Conservative Government Resolution containing the declaration that "Québécois form a nation within a united Canada." In the result, in a minority government situation in Parliament, the federal House voted nevertheless, by clear majority, to adopt the Government motion. The Heavens haven't fallen since! And this may turn out to have been a turning point in a long series of attempts at accommodating Quebec's aspirations, born out of the Quiet Revolution. In order to better understand how we came to that point and what remains to be accomplished, this paper retraces the history of these attempts.

The Legacy of Quebec's Quiet Revolution

The death of long-reigning conservative Premier of Quebec, Maurice Duplessis, in 1959, and the inability of his several successors with the *Union Nationale* governing Party to maintain power in the 1960 Quebec Provincial elections, offered to federal and Provincial political leaders in the rest of Canada the beginning of a new era in Quebec politics. The election as Premier of a new Quebec Provincial Liberal government, Jean Lesage, who immediately assembled a brilliant *équipe de tonnerre*, including strong, disparate personalities like René Levesque and Eric Kierans as Ministers, indicated the possibilities of a significant change of direction and new policies. It was at this same time that that profound movement of thinking among Quebec intellectuals and

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leaders of opinion outside the formal party political processes (Claude Ryan, the Editor of the influential daily, *Le Devoir* among the most prominent of these) that came to be called the “Quiet Revolution,” with its challenge to the traditional, conservative, rural-oriented values of Quebec society and the close links between church and state, first came to the attention of Anglo-Canadian political *elites* with its implications for the future of the Canadian federal constitutional system and Quebec’s place in it. The first reactions to the Quiet Revolution, outside Quebec, were generally ones of surprise, with the somewhat puzzled or plaintive response: What does Quebec want? This had provided the occasion, in 1962, for a special conference called by the University of Toronto’s Faculty of Law, with the keynote speaker Mr. Justice Ivan Rand who, in cases coming before the Supreme Court of Canada from Quebec over the preceding decade and more and involving conflicts between Quebec state and church authority on the one hand and dissident political and religious groups, had, in a series of powerfully reasoned and elegantly written concurring judicial Opinions, succeeded in creating a Common Law-based Bill of “Rights of the Canadian Citizen”—extending to freedoms of speech and assembly and procedural due process, and this some few years before Conservative Prime Minister John Diefenbaker’s Parliamentary Bill of Rights of 1960 and a full three decades before Prime Minister Trudeau’s constitutionally-entrenched Canadian Charter of Rights and Freedoms of 1982. Also present at the Toronto conference in 1962 were several of the brighter younger Quebec thinkers and scholars who, from chairs or similar posts in the francophone Universities in Quebec, were attempting to spell out some form of concrete agenda for change in federal governmental structures and the constitutional system at large in response to the imperatives for change, as they saw them, of the Quiet Revolution. To the basic question—What does Quebec want?, Professor Jacques-Yvan Morin who, later, would be elected to the *Assemblée Nationale* of Quebec and become Leader of the Opposition and then Deputy Premier in René Levesqué’s *Parti québécois* government, would suggest, politely, that the mere fact of his interlocutors from English-speaking Canada having to raise the question indicated their own failure to maintain any continuing monitoring of the constitutional-governmental system of Canada so as to determine its points of weakness or decay and to proceed to its modernization and renewal to meet new societal conditions and needs in Canada. The art of problem-solving in any organised society, in the words of US social scientist, Harold Lasswell, is to make changes while they are still timely, and before a situation becomes pathological and politically out-of-hand. The major criticism that would emerge thereafter in relation to responses from the English-speaking Provinces and from the federal forces in Ottawa to the challenge of change raised by the Quiet Revolution, was that, while well-meaning and no doubt well-intentioned, there was always a certain time lag between formulation of Quebec proposals and their perception and eventual acceptance in English-speaking Canada: an example perhaps of too little or too late. Over the course of the next several decades from 1960 on, Quebec “demands,” under still-federalist Quebec Premiers of Liberal and then *Union Nationale* and finally Liberal once more party affiliations, would advance from acceptance of a “special” constitutional status for Quebec within the federal system (reflecting the “French fact” in culture and language in Quebec), later to be re-styled, more euphemistically, as a “particular” status; on to Daniel Johnson Sr.’s rather more rhetorical formulation of “Egalité ou Indépendance”; and culminate, with the election of René Levesque’s *Parti québécois* in 1976, to the carefully devised and ingeniously formulated “sovereignty-association” proposal that would become the core proposition in Premier Levesque’s Quebec Provincial referendum on separation from Canada, in May, 1980.

The present author, looking back at the end of the 1970s in the run-up of that first Quebec referendum campaign, had offered the suggestion then that relatively modest changes in the Canadian federal system, offered while good federalists like Premiers Jean Lesage, Daniel Johnson, Sr., Jean-Jacques Bertrand, and Robert Bourassa were in office, and directed to pragmatic governmental accommodations on specific problem-situations or tension-issues might have been sufficient to channel the flow of ideas for change emerging from the Quiet Revolution into pan-Canadian, cooperative, joint federal-and- provincial programmes for reform and modernization and ultimate renewal of antique federal constitutional structures and processes inherited from 1867. Canada, with the World's third oldest written constitution, had, unlike the United States and Switzerland, experienced little in the way of serious and sustained attempts at substantive review, and consequent substantive change, since the Constitution's first adoption.

There had indeed been some positive responses, in federal Ottawa and in one at least of the Provinces, Ontario, during this period of the first two decades of the Quiet Revolution. If followed up energetically, these initiatives might have led in the direction to a programme of pragmatic change. Prime Minister Pearson, in his two minority governments (1963-5 and 1965-8), used his own considerable professional experience and background in patient diplomatic negotiation, to introduce a politic of "cooperative federalism" in federal-Quebec and federal-Provincial relations generally. Pearson's Cooperative Federalism was exercised as a form of executive federalism, without formal constitutional amendments and on a necessarily piecemeal, step-by-step basis. Out of this conscious federal politic emerged Ottawa-Quebec special agreements and formal understandings on concrete practice as to Quebec government representation in and active participation as part of the Canadian delegations to international conferences and international organizations touching on the French fact in its cultural and linguistic exercise. The practical opening to a Quebec rôle in Canadian foreign policy-formation in international agencies like UNESCO, was actively sponsored by Pearson's Foreign Minister, Paul Martin, Sr., with a welcome quiet support and understanding on the part of Ontario Premier John Robarts. It stands as an example of an empirical approach to the issue of a "special" or "particular" rôle for Quebec, but on a deliberately non-rhetorical basis in circumstances where pragmatic judgment and common-sense clearly demonstrated its mutual benefit and practical utility in federal and Quebec terms. These *de facto* accommodations of the 1960s anticipated by some four decades the latter-day debate about providing just such a bilateral, federal-Quebec special constitutional arrangement as to a Quebec rôle in foreign relations,—an issue raised and debated in Ottawa in 2006-7, incidentally without either party, Ottawa or Quebec, seemingly being aware of the earlier, Pearson/Martin practical arrangements made with Quebec Provincial Liberal and *Union Nationale* governments in the 1960s.

Other, similar federal initiatives were not too forthcoming at the time, probably because of federal government preoccupation with those oldest, continuing, permanent constitutional files—involving the search for new, all-Canadian, autonomous, self-operating machinery for amending the *Constitution Act* of 1867, in replacement of the anachronistic Imperial (British) mechanism of amendment by Act of the Imperial Parliament in London enacted at the request of the federal government. Those particular federal files had been around since 1927 and had been the subject of numerous federal Provincial inter-governmental conferences since that time

without result. Although the federal government, under Pearson and then Trudeau, moved to bring the files to successful completion at long last and almost succeeded politically with the federal-Provincial Victoria Accord of 1971, it may be suggested that deciding what one wants to put into a constitutional charter is more readily capable of generating public support for change than the necessarily dry, textually-based discussion, continued *ad infinitum*, on the amending machinery itself. This, ultimately still-born federal initiative of 1971 and also the federal Official Languages Act of 1970, establishing French and English official bilingualism within the federal government and its services, hardly unexpectedly were not enough to stave off the rising tide of political disillusionment or disaffection within Quebec as to the progress of change to the federal system. It was not until the shock of the electoral defeat of the Bourassa Provincial Liberal government in 1976 and its replacement by the Levesque pro-separatist government that the Trudeau federal government began its own approach to preparing a comprehensive programme for substantive, institutional and processual change in the federal constitutional system. But it was then very late in the day, and it all ended, inconclusively, with Trudeau's defeat in the federal general elections of 1979, about the same time as the launching of Quebec's own Provincial "sovereignty-association" referendum vote.

Reference has been made already to the positive contribution of Ontario Provincial Conservative Premier, John Robarts, to the development of a politic of pragmatic accommodation for Quebec's "particularistic" constitutional proposals in concrete problem-situations where those proposals could be accepted, empirically, as reasonable in relation to the federal system as a whole. Robarts' term as Premier of Ontario began soon after Lesage's election in Quebec. Robarts, who would go on to support Prime Minister Pearson's adoption of the new Canadian (Maple Leaf) flag, in spite of opposition from within Robarts' own Provincial Conservatives organization, quietly moved to establish a close working relation between Ontario and Quebec. This effective *entente cordiale* between the two Provinces led Robarts to establish a non-partisan Advisory Committee on Confederation and its renewal, drawing on expert talent as diverse as Donald Creighton, Eugene Forsey, Alexander Brady, Tom Symons, Ian MacDonald, John Meisel, and Bora Laskin, to advise him on the renewal of the federal system. Robarts also introduced his own pro-active policies as to French language education in Ontario schools and on rights of franco-Ontarians. His advisors published two volumes of their studies and recommendations on constitutional change. These were perhaps the most impressive and detailed collection of federal constitutional papers, federal or Provincial, of this period, with their openings to step-by-step, incremental programmes of constitutional change, including acceptance of Quebec claims for "special" or "particular" constitutional provisions which could also be opened to other Provinces than Quebec if desired. Robarts would later be invited by Prime Minister Trudeau to co-chair, with federal Liberal Minister, Jean-Luc Pepin in 1978-9, in the last federal response to the approaching Quebec Provincial referendum on separation, a special federal constitutional Task Force which would devise the new, in Canadian terms, constitutional concept of "assymetrical federalism"—particular or distinct, special constitutional provisions and powers for different member-states or Provinces, according to demonstrated special conditions or special needs in each case. The defeat of the Trudeau government in the 1979 federal elections ended the possibility of adoption of that revolutionary concept. When Trudeau was returned again to power in the next ensuing election, he would introduce his own package of constitutional change proposals—the so-called constitutional "Patriation" package. These comprised ending formal British links in the Act of 1867, and introducing an all-Canadian constitutional amending machinery, and finally also the politically rather more controversial

constitutional Charter of Rights, and Freedoms. The Trudeau constitutional package did not include asymmetrical federalism as a new governing principle for constitutional change.

One of the politically more curious aspects of the Quiet Revolution's impact in constitutional change in Quebec concerns Prime Minister Trudeau's own *rôle* in the great debate, over the years since 1960, between the successive governments of Quebec on the one hand and federal Ottawa. The options as to change to the constitution were historically constrained by the continuing centralization of political and economic power in the federal government and the marked accretion to the federal government in the supporting constitutional law-making powers and processes necessary for that. In its early post-1867 period, as applied in London by the Privy Council, (the highest appellate jurisdiction for the British colonial Empire overseas, sitting in London), the *Constitution Act* of 1867 was generally interpreted, in cases of federal-Provincial conflicts over powers, in favour of the Provinces as a whole, this as influenced by liberal pluralist ideas on the part of its key judges, Lord Watson and Lord Haldane. Thereafter, under the impact of the deemed imperatives of central planning during World War I, and reinforced by the onset of the World Economic Depression at the end of the 1920s, and by the rise of Keynesian economics, the federal government came to be viewed by planners and technocrats as the most favourable arena for implementation of their ideas. Keynesian economics resulted, as law-in-action, more or less inevitably, in a highly centralized Keynesian constitution. The intellectual climate in the Universities and academies in English-speaking Canada was generally centripetally oriented, and this among a widely diverse group of personalities: W. P. M. Kennedy, Vincent MacDonald, Frank Scott, Raphael Tuck, and the young Bora Laskin, as prime examples. It would take a very strong group of Provincial Premiers to counter this, and apart from Robarts in Ontario and his successive Quebec counterparts, the Provincial Premiers did not have the constitutionally sophisticated advice readily available to them to counter federal power effectively. It was always apparent that special concessions or accommodations of a constitutional nature for Quebec in Canadian federalism would either have to come from recognition and acceptance, *de facto* if not *de jure*, or "special" or "particular" or "distinct" status for Quebec by itself; or else through some, by now generalised, comprehensive redistribution and relocation or decentralization of effective power, including fiscal and tax and revenue powers, in favour of *all* of the Provinces together at the expense of the federal government. Prime Minister Trudeau, of a slightly older generation of Quebec thinkers than those who led the Quiet Revolution, had, as demonstrated by Max and Monique Nemni in their recent work, in reaction to some of his earlier, youthful ideas, turned against ultra-nationalist thinking, whether Quebec or other. Trudeau moved easily into the dominant Keynesian planning philosophy of Ottawa of the late 1960s and the 1970s; but his position was never intransigent, for example, in relation to Quebec claims to special safeguarding of the French fact and French culture in Quebec. Thus, as Prime Minister, when faced by Premier Bourassa's Bill 22 of 1974, establishing French as the Official Language of Quebec and also Language of Work and primary Language of Education, at the same time as offering legal protections to the English-language minority, and when then having to deal with Premier Levesque's rather more Draconian Bill 101 of 1977 replacing the Bourassa Bill of 1974, Trudeau resisted demands to invoke antique federal constitutional powers to disallow (annul) the Provincial legislation or else to wage a guerrilla war of legal actions against those laws in the federal courts. Instead, Trudeau seemed to accept that the Province of Quebec would constitutionally apply "territoriality" of the French language in Quebec in terms of Quebec's own jurisdiction and law-making reach, provided Quebec also guaranteed English-speaking minority rights in the Province. The Provincial laws would thus

become an acceptable complement to the federal Act of 1970 establishing English and French as Official Languages throughout Canada within the reach of federal institutions and federal powers. By the same token, criticisms of Trudeau's belated, after-the-event reaction to the Quebec Provincial Sovereignty-Association referendum of May, 1980, and to the clear majority rejection of the referendum proposal by Quebec voters—Trudeau's compromise three-part Constitutional "patriation" project, and the failure of his original, more grand design of a wholesale revision and modernization of federal constitutional institutions and processes, do not perhaps fully recognise the disabling concessions Trudeau had felt compelled to make to secure the grudging political support of the politically intransigent "Group of Eight" Provincial Premiers, and to overcome any opposition in the British Parliament to the adoption of the "patriation" project as the last, made-in-Britain, Imperial amendment to the *Constitution Act* of 1867. Any disappointment that the Trudeau package, as finally enacted in 1982 in London, fell significantly short of being a remaking of the "old" Constitution of 1867, and that it was not a new act of Constituent power, and not, in any case, a response to Quebec's Quiet Revolution prime imperatives, was felt most strongly in Quebec itself where the then government of Quebec and its later successors all refused to "sign" the 1982 Constitution Act, though that symbolic withholding of such Quebec consent could hardly affect its constitutionality in strict legal terms.

The subsequent attempt by subsequent federal Governments to retrace the lost constitutional ground—most ambitiously by the Mulroney federal Conservatives with the imaginative Meech Lake Accord, 1987-1990, whose proposals, strongly influenced by the Pepin-Robarts Commission's Report of 1978-9, came very near to adoption as a constitutional amendment, and the subsequent, rather less felicitously assembled Charlottetown Accord which ended with the political disaster of rejection in a nation-wide public vote—has not removed the proclaimed public grievance for Quebec Governments. It may even have induced a countervailing scene of constitutional resignation, most notably on the part of the decade-long Chrétien federal Liberal government (1993-2003), that it would be politically hopeless to attempt to re-open the constitutional files again. This politic of benign inaction on federalism and on the constitutional front by the federal government was broken only by the Chrétien government's so-called Clarity Bill which adopted a proposal originally raised in the House of Commons in 1994 and 1996 by then Opposition M.P.(Reform Party), Stephen Harper, for asserting a federal legal power to control any ambiguous or deliberately misleading verbal formulation by the Quebec government in any future Quebec Provincial referenda on separation. The Chrétien Government Bill was brought in only *after* the hair's-breadth majority, "near-miss," pro-federalism vote in the second Quebec Sovereignty Association referendum, after the Chrétien Government had refused to act on the Harper proposal in 1994, *before* the Quebec referendum, and then in 1996 immediately after the referendum. The *Clarity Act* stands thereby as an example of trying to close the barnyard door after the horse had already bolted. Prime Minister Trudeau had rejected a similar proposal for federal Government legal intervention against the Quebec Government's Sovereignty-Association formula as put forward in the first such Quebec referendum of May, 1980, preferring to put aside legal arguments in the federal courts and opting instead to fight the Quebec Government's proposal politically by directly entering and engaging in the Quebec referendum campaign. This Trudeau did, triumphantly, emerging with a clear 21 per cent pro-federalism majority against the referendum's proposal.

Conclusion

The long debate will undoubtedly continue over how to accommodate, within the federal system, the best aspirations of Quebec's Quiet Revolution. Mistakes were obviously made in the past, or opportunities for politically acceptable solutions not profited from when the time was ripe. English-speaking Canadians, federal and Provincial, took too long to comprehend the nature and quality of Quebec "demands," or to accept that pragmatic accommodations were possible, on a basis of mutuality and reciprocity of interest, once the debate should be shifted from the abstract, high-level doctrinal level to concrete, empirically-based problem-situations. Prime Minister Mulroney dallied too long, when political success was within his grasp, after *all* the Provincial Premiers had signed on to the Meech Lake Accord text in 1987, in himself moving to ensure the Accord would have prompt ratification as constitutional amendment by the respective Provincial legislatures, within the requisite three-year follow-up period for such action. By the final hours in 1990, the Provincial political players had changed and some of the Premiers party to the original 1987 consensus had given way to constitutionally less steadfast or reliable players. Prime Minister Trudeau, by the same token, failed to pluck the blossom of the day in the aftermath of the Canada-wide public euphoria resulting from gratitude for the triumphant pro-federalist vote in the May, 1980, Quebec referendum, in the evident public willingness to support fundamental change. Trudeau waited too long with his constitutional "patriation" package until he was constrained, finally, to accept watered down compromises imposed by the "Group of Eight" Provincial Premiers as the price of their political acquiescence to the constitutional amendment that would become the Constitution Act of 1982. Again, Prime Minister Chrétien, with three consecutive majority governments in 1993, 1997 and 2000, and command of both Houses of Parliament, may have erred in keeping the constitutional dossier firmly closed for a full decade after 1993, apart from his by then largely irrelevant federal Clarity Act. The near federal political disaster, early in Chrétien's mandate, provided by the actual vote in the second Quebec referendum, suggests the dangers of *immobilisme* and absence of imaginative initiatives when one holds all the political cards. Finally, could not Quebec leaders, *Union Nationale*, Provincial Liberal, and *Parti québécois*, in their turn, have shown, (and this not merely for tactical political reasons), some greater generosity and interest in making common cause with the other Provinces over Canada-wide Provincial common concerns for correcting conceived fiscal imbalances in the federal system; and for promoting more equitable divisions of taxation and revenue resources; and for reforming federal institutions and processes inherited from the original Constitution Act of 1867 that appear manifestly out-of-date and functionally incapable today of responding to imperatives of contemporary democratic constitutionalism? The unreformed, unelected Senate, for example, has long been a major point of grievance for English-speaking Canada. Surely, even Quebec reformers, whatever their political affiliation, must have been startled at the characterization of the federal Senate, made by Supreme Court of Canada judges on an Advisory Opinion reference by the Trudeau Liberal Government in 1979, as the "protector of Provincial Rights"? Premier Charest of Quebec's success in persuading other Provincial Premiers to join with him in adopting a proposal by Claude Ryan, put forward in the Quebec Provincial Liberal "Livre Beige" of the 1970s, to establish a Council of the Federation as a permanent institution bringing together the Premiers of *all* the Provinces to negotiate and formulate common positions and strategies for constitutional modernization and federal reform, is clearly a major advance, if belated, in the right direction at this time.